

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**WINDOW WORLD OF BATON
ROUGE, LLC**

Plaintiff,

v.

**COLONY INSURANCE COMPANY
AND HALLMARK SPECIALTY
INSURANCE COMPANY**

Defendants.

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Case No.

APPENDIX

Tab	Document	App. No.
1.	List of all parties in this case (including their party type and which parties have requested a jury trial); the current status of the removed case (including the name and address of the court from which the case was removed); and the name, bar number, address and telephone number of each party's attorneys	02 - 04
2.	Copy of the state court docket sheet	05 - 07
3.	All executed process in this matter	08 - 11
4.	All pleadings asserting causes of action and all answers to such pleadings	12 - 21

TAB 1

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
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**WINDOW WORLD OF BATON
ROUGE, LLC**

Plaintiff,

v.

**COLONY INSURANCE COMPANY
AND HALLMARK SPECIALTY
INSURANCE COMPANY**

Defendants.

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Case No.

LIST OF PARTIES AND ATTORNEYS

Pursuant to Rule CV-81 of the Local Civil Rules of the United States District Court for the Eastern District of Texas, Defendant Colony Insurance Company ("Colony") submits the following information:

Plaintiff	Window World of Baton Rouge, LLC
Counsel for Plaintiff	Gwen E. Bhella State Bar No. 24046632 CALHOUN, BHELLA & SECHREST, LLP 325 N. Saint Paul Street, Suite 2300 Dallas, Texas 75201 (214) 981-9200 Telephone (214) 981-9203 Facsimile gbhella@cbsattorneys.com
Defendants	Colony Insurance Company Hallmark Specialty Insurance Company
Counsel for Defendant Colony Insurance Company	Stephen A. Melendi State Bar No. 24041468 Matthew Rigney State Bar No. 24068636

	Jibril Greene State Bar No. 24093774 TOLLEFSON BRADLEY MITCHELL & MELENDI, LLP 2811 McKinney Avenue, Suite 250 West Dallas, TX 75204 (214) 665-0100 Telephone (214) 665-0199 Facsimile stephenm@tbmmlaw.com matr@tbmmlaw.com jibrilg@tbmmlaw.com
Status of Removed Case	Pending before the 296th Judicial District Court of Collin County, Texas
Court from Which Removed	296th District Court Russell A. Steindam Courts Building 2100 Bloomdale Road, Suite 20012 McKinney, Texas 75071
Request for Jury Trial	No party has submitted a jury demand at this time.

TAB 2



COLLIN COUNTY
collincountytx.gov

(<http://www.collincountytx.gov>)

[Back to Case Search Results \(/JudicialRecords/Case/Search?](#)

[searchType=Attorney&caseTypes=CR%2CCV%2CFAM%2CPR&nodes=7&page=1&searchCriteria=%7CMelendi%7C\)](#)

Case Details

Case History

Case Number

296-06567-2018

Date Filed

12/13/2018

Case Type

Consumer/Commercial/Debt

Status

Pending

Style

Window World of Baton Rouge, LLC vs. Colony Insurance Company and Hallmark Specialty Insurance Company

Judicial Officer

Roach, John R., Jr. in 296th District Court

Parties

Type	Name	DOB	Attorney	Address
Defendant	Colony Insurance Company		Stephen A Melendi	
Defendant	Hallmark Specialty Insurance Company		Pro Se	
Plaintiff	Window World of Baton Rouge, LLC		Gwen E. Bhella	

Case Events

Date	Event
12/13/2018	Plaintiff's Original Petition (OCA) \$298.00
12/14/2018	Request for Citation \$8.00
12/14/2018	Citation
12/17/2018	Request for Citation by Certified Mail \$83.00
12/17/2018	Citation
12/26/2018	Certified Green Card Returned
01/14/2019	Original Answer

[Details](#)

[Details](#)

Financial Summary

Party Type	Charges	Payments	Balance
Plaintiff	\$389.00	\$389.00	\$0.00

Transactions

Date	Amount	
12/14/2018	\$306.00	Details
12/14/2018	(\$306.00)	Details
12/17/2018	\$83.00	Details
12/17/2018	(\$83.00)	Details

[Back to Case Search Results \(/JudicialRecords/Case/Search?](#)

[searchType=Attorney&caseTypes=CR%2CCV%2CFAM%2CPR&nodes=7&page=1&searchCriteria=%7CMelendi%7C\)](#)

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[Privacy & Accessibility \(http://www.collincountytx.gov/Pages/privacy.aspx\)](http://www.collincountytx.gov/Pages/privacy.aspx)

TAB 3

CITATION BY MAILING
THE STATE OF TEXAS
296-06567-2018

Window World of Baton Rouge, LLC vs. Colony
Insurance Company and Hallmark Specialty Insurance
Company

296th District Court

Of Collin County, Texas

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney does not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: Colony Insurance Company
By Serving Texas Department of Insurance
Colony Insurance Company
PO Box 460911
San Antonio TX 78246, Defendant

You are commanded to appear by filing a written answer to **Plaintiff's Original Petition** at or before ten o'clock A.M. on the Monday next after the expiration of twenty days after the date of service of this citation before the 296th District Court of Collin County, Texas at the Courthouse of said County in McKinney, Texas.
Said Plaintiff's Petition was filed in said court, by Gwen E Bhella 325 N Saint Paul St Suite 2300 Dallas TX 75201 (Attorney for Plaintiff or Plaintiffs), on the 13th day of December, 2018.

Issued and given under my hand and seal of said Court at McKinney, Texas, on this the 17th day of December, 2018.

ATTEST: Lynne Finley, District Clerk
Collin County, Texas
Collin County Courthouse
2100 Bloomdale Road
McKinney, Texas 75071
972-548-4320, Metro 972-424-1460, ext. 4320



By: Brittany Tucker Deputy
Brittany Tucker

The law prohibits the Judge and the clerks from giving legal advice, so please do not seek legal advice. Any questions you have should be directed to an attorney.



BRITTANY TUCKER
COLLIN COUNTY DISTRICT CLERK
2100 BLOOMDALE RD STE 12132
MCKINNEY, TX 75071-8316



9214 8901 0661 6400 0131 8425 13

RETURN RECEIPT (ELECTRONIC)

296-06667-2018

COLONY INSURANCE
THROUGH THE TEXAS DEPARTMENT OF INSURANCE
PO BOX 460911
SAN ANTONIO, TX 78246

COLONY

COLONY

COLONY

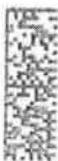
CERTIFIED MAIL

neopost

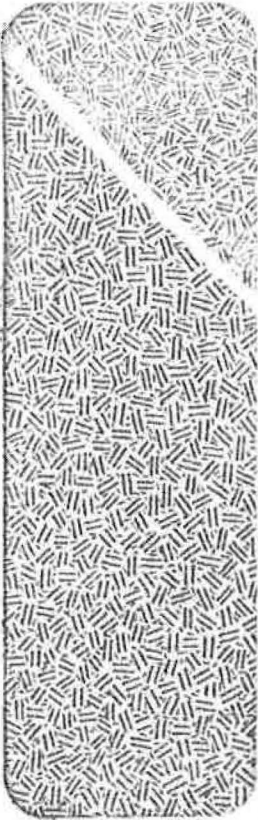
FIRST CLASS MAIL

12/18/2018

US POSTAGE \$005.63



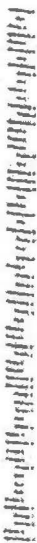
ZIP 75071
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DEC 28

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SAN ANTONIO TEXAS



TAB 4

CAUSE NO. 296-06567-2018

**WINDOW WORLD OF BATON ROUGE,
LLC**

IN THE DISTRICT COURT

Plaintiff;

VS.

JUDICIAL DISTRICT

**COLONY INSURANCE COMPANY
AND HALLMARK SPECIALTY
INSURANCE COMPANY.**

Defendants.

COLLIN COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

COMES NOW the Window World of Baton Rouge, LLC ("Window World") and files this Original Petition against Defendants Colony Insurance Company and Hallmark Specialty Insurance Company, and respectfully show as follows:

I.
PARTIES

1. Plaintiff Window World of Baton Rouge, LLC is a Louisiana limited liability company doing business in the State of Texas.
2. Defendant Colony Insurance Company ("Colony") is an entity incorporated under the laws of Virginia but doing business in the State of Texas. Colony Insurance may be served through the Texas Department of Insurance by certified mail to the following address: Colony Insurance Company, P.O. Box 460911, San Antonio, Texas 78246.
3. Defendant Hallmark Specialty Insurance Company ("Hallmark") is a surplus lines carrier organized under the State of Texas with its principal place of business in San Antonio, Texas. Hallmark may be served through its registered agent for service of process, Donald E. Meyer, 7550 W. IH-10, Suite 1400, San Antonio, Texas 78229.

IV.
VENUE

4. Venue is proper in Collin County, Texas under Section 15.002(a)(1) of the Texas Civil Practice & Remedies Code because a substantial number of the events or conditions giving rise to the claims occurred here.

V.
FACTUAL BACKGROUND

5. On or about June 28, 2017, Kevin and Amy Long signed a contract with Window World for the purchase of windows and window installation at 1011 Beechwood Drive, Murphy, Collin County, Texas 75094.

6. Window World subcontracted the installation of the windows to Leticia Disatis by entering into a contract on August 3, 2017.

7. Following installation, the Longs noticed issues relating to water intrusion around the windows, which ultimately resulted in water damage to drywall, structural damage to the wall, damage to hardwood flooring, and damage to the window trim and casings.

8. Window World made an insurance claim with its insurer, Colony Insurance Company, for indemnity and defense relating to the Longs' claim.

9. Colony Insurance had issued Commercial General Liability Policy No. 103 GL 0010436-02 to Window World with a policy period from July 1, 2017 to July 1, 2018. The policy was a renewal of Commercial General Liability Policy No. 103 GL 0010436-01 with a policy period from July 1, 2016 to July 1, 2017. Window World paid \$182,091.00 in premiums for the policy.

10. After tendering the claim to Colony, Colony made a demand on the installer's insurer, Hallmark Specialty Insurance Company, for indemnity and defense on behalf of Window World on or about March 13, 2018.

11. Hallmark had issued Commercial General Liability Policy No. G42405995-02 (the "Hallmark Policy") to Leticia Disatis with an original policy period from October 8, 2016 to October 8, 2017.

12. Hallmark declined to provide Window World a defense or indemnity in connection with the Longs' claim via a letter dated April 17, 2018, contending that it had terminated the policy. However, Hallmark's purported notice of termination did not comply with Texas Insurance Code section 551.053. and was therefore of no effect. Despite this, Hallmark has continued to refuse to indemnify Window World.

13. During this time, Colony Insurance communicated with the Longs regarding a possible resolution of their claims but refused to negotiate in good faith and ultimately became unreachable.

14. Because of Colony Insurance's failure to properly handle the claim, after much negotiation, in July 2018, Window World settled the Longs' claim for \$49,500. The Longs assigned all of their claims to Window World as part of the settlement.

15. Window World made multiple written demands to Colony Insurance for indemnity, including in August 2018, September 2018, and November 2018. Colony has failed to respond.

VI. CAUSES OF ACTION

A. Breach of Contract against Hallmark Insurance

16. The preceding paragraphs are incorporated herein by reference.

17. Hallmark issued a valid policy of insurance to Window World subcontractor Leticia Desatis (the "Hallmark Policy").

18. Window World was an additional insured under the Hallmark Policy.

19. Hallmark refused to defend and indemnify Window World pursuant to the terms of the Hallmark Policy.

20. Hallmark breached the provisions of its policy.

21. As a result, Plaintiff has been damaged in the amount of \$49,500.

22. Additionally, Plaintiff has had to retain an attorney and therefore seeks reasonable and necessary attorneys' fees.

B. Breach of Contract against Colony Insurance

23. The preceding paragraphs are incorporated herein by reference.

24. Colony issued a valid policy of insurance to Window World.

25. The terms of the Colony Policy required Colony to defend and indemnify Window World in the event of a claim.

26. Colony failed to properly defend Window World against the allegations made by the Longs.

27. Further, following resolution of the claims with the Longs, Colony has failed to indemnify Window World for the \$49,500 in payments made to the Longs for the claim and has failed to respond to demands for indemnification.

28. Colony has breached the provisions of its policy.

29. As a result, Plaintiff has been damaged in the amount of \$49,500.

30. Additionally, Plaintiff has had to retain an attorney and therefore seeks reasonable and necessary attorneys' fees.

C. Breach of the Duty of Good Faith against Colony Insurance

31. The preceding paragraphs are incorporated herein by reference.

32. Texas law recognizes a duty of good faith and fair dealing in the insurance context. *Arnold v. Nat'l Cnty. Mut. Fire Ins. Co.*, 725 S.W.2d 165, 167 (Tex. 1987). The duty arises from the special relationship that is created by the contract between the insurer and the insured. *Id.*; see also *Viles v. Security Nat'l Ins. Co.*, 788 S.W.2d 566, 567 (Tex. 1990) (recognizing that the duty arises "not from the terms of the insurance contract, but from an obligation imposed in law" as a result of the special relationship).

33. Colony Insurance owed a duty of good faith and fair dealing to Plaintiff, including a duty not to unreasonably delay in the payment of a claim.

34. Colony Insurance breached its duty of good faith and fair dealing to Plaintiff, by among other things, failing to indemnify Plaintiff for the Longs' claim; failing to negotiate and communicate with the Longs on behalf of Window World in good faith; and failing and refusing to indemnify, deny, or offer any explanation in regards to why it has not indemnified Window World.

35. There is no reasonable basis for Colony's actions or inactions.

36. As a result of Colony's breach of its duty of good faith and fair dealing owed to Plaintiff, Plaintiff has been damaged in the amount of \$49,500.

37. Additionally, Plaintiff has been forced to incur reasonable and necessary attorneys' fees as a result of Colony's actions and inactions, for which Plaintiff seeks recovery.

D. Breach of Prompt Payment Statute by Colony

38. The preceding paragraphs are incorporated herein by reference.

39. Chapter 542 of the Texas Insurance Code requires insurers to promptly pay all claims to its insureds.

40. Plaintiff provided written notice of the claim to Colony in February 2018.

41. After Colony failed to properly investigate and settle the claim, and after Window World settled the claim for \$49,500, Window World made a demand upon Colony for indemnification in writing on August 6, 2018. Colony did not acknowledge receipt of the claim, in violation of Texas Insurance Code section 542.055(a)(1).

42. Having not heard from Colony, on September 12, 2018, Window World made another written demand to Colony Insurance. Colony did not acknowledge receipt of this second demand for 29 days, on October 11, 2018, in violation of Texas Insurance Code section 542.055(a)(1).

43. On October 11, 2018, Colony requested the original demand letter and basis for the claim, which was provided to them promptly on October 16, 2018.

44. Colony never requested any additional items, statements, or forms from Window World, and certainly did not do so within 15 days of notice of the claim, as required by Texas Insurance Code Chapter 542.

45. Colony never notified Window World whether it accepted or rejected the claim, nor did it request an extension of time, in violation of Texas Insurance Code section 542.056(a) and (d).

46. Colony has, to this date, failed to pay the claim. More than 60 days have passed since submission of the claim to Colony. Colony is therefore also in violation of Texas Insurance Code section 542.058(a).

47. As a result of Colony's violations of the Prompt Payment Statute, Plaintiff is entitled to recovery of the \$49,500, plus 18% interest, plus reasonable attorneys' fees and costs.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request:

- a. Economic damages;
- b. Statutory Penalties and Interest
- c. Reasonable attorneys' fees;
- d. Costs of Court;
- e. Pre-judgment and post-judgment interest; and
- f. All other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Gwen Bhella

Gwen E. Bhella
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ATTORNEYS FOR PLAINTIFF

CAUSE NO. 296-06567-2018

WINDOW WORLD OF BATON ROUGE, LLC	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
	§	
v.	§	COLLIN COUNTY, TEXAS
	§	
COLONY INSURANCE COMPANY AND HALLMARK SPECIALTY INSURANCE COMPANY	§	
<i>Defendants.</i>	§	296th JUDICIAL DISTRICT

DEFENDANT COLONY INSURANCE COMPANY'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Colony Insurance Company ("Defendant" and/or "Colony") files this, its *Answer*, as follows:

I.
GENERAL DENIAL

Pursuant to Texas Rule of Civil Procedure 92, Colony generally denies the allegations contained in Plaintiff Window World of Baton Rouge, LLC's ("Plaintiff") Original Petition and demands strict proof by a preponderance of the evidence of all Plaintiff's allegations.

PRAYER

Colony respectfully prays that Plaintiff take nothing by reason of her suit herein, and that Colony be awarded all such other and further relief as to which it may otherwise be entitled.

Respectfully submitted,

/s/ Stephen A. Melendi

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Dallas, Texas 75204
(214) 665-0100 Telephone
(214) 665-0199 Facsimile

**ATTORNEYS FOR DEFENDANT COLONY
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon counsel of record pursuant to the Texas Rules of Civil Procedure on this 14th day of January, 2019.

Gwen E. Bhella
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325 N. Saint Paul Street, Suite 2300
Dallas, Texas 75201
(214) 981-9200 (Telephone)
(214) 981-9203 (Facsimile)
Attorney for Plaintiff

/s/ Stephen A. Melendi
Stephen A. Melendi